



2022 ANNUAL REPORT

DC Office of the
Ombudsman
for Public Education



EXECUTIVE SUMMARY

After two years of virtual learning, District students returned to in-person learning in the 2021-22 school year (SY 2021-22). As expected with the return to in-person learning, call volume returned to pre-pandemic levels. The Office received eight hundred thirty-four contacts (834) and handled six hundred twenty-six cases (626). Compared to SY2020-21, when most students were in a virtual posture all year, the Office's contacts increased by approximately seventy-three percent (73%).

In SY 2021-22, Communication and Engagement, Safety, and Special Education returned to the top three topics. Student safety cases comprised forty-seven percent (47%) of concerns. The safety concerns were primarily a mixture of student violence and pandemic-related concerns regarding exposure to Covid-19, quarantining requirements. Special Education concerns comprised approximately thirty percent (30%) of our cases. Additionally, discipline concerns returned to pre-pandemic volume comprising roughly seventeen percent (17%) of our cases.

Policy Recommendations

SY 2021-22 policy recommendations address concerns identified in the amalgamated data. The Office recommends the following:

Trend: Schools had challenges implementing the Student Fair Access Act.

Recommendation: Local education agencies (LEAs) should amend school discipline policies to ensure compliance with the Student Fair Access Act, specifically provisions that require examples and explanations of the law and due process rights.

Trend: Schools had difficulty implementing student Individualized Education Plans because of staffing shortages.

Recommendation: Require local education agencies to notify families of students with disabilities when staff transition, which will result in the suspension of required specialized instruction. The notification should include the projected time for hiring a replacement, a proposed schedule to make up missed hours, and information about the right to compensatory education services.

Trend: Families of students with disabilities have limited access to out-of-school time programming.

Recommendation: OSSE should issue guidance describing out-of-school time providers' legal requirements to accommodate students with disabilities, as well as toolkits and training to help out-of-school-time staff create inclusive environments for students with disabilities.

Trend: Insufficient communication from schools after student injury.

Recommendation: LEAs should create guidelines for conditions that necessitate contacting caregivers promptly when their children are injured at school and providing documentation for transparency and accountability.

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**LETTER FROM THE OFFICE OF
THE OMBUDSMAN FOR PUBLIC EDUCATION**

October 1, 2022

To: District of Columbia State Board of Education

The return to in-person learning after the Covid-19 pandemic was the story of the school year 2021-22 (SY 2021-22). With the influx of education recovery funding from the federal government, local education agencies intended to begin recovery initiatives. Such initiatives included plans to assess student learning loss, invest in high-dosage tutoring, and lead with a focus on social and emotional learning—understanding that many students experienced trauma and disconnect from their school communities and the resources that school systems provide.

Returning to in-person learning was a challenge for school systems. Schools were overwhelmed by contact tracing protocols and reporting. Families were confused about ever-changing guidance. Students were in and out of school due to Covid-19 exposure, often without receiving coursework or instruction. In many cases, the challenges experienced returning to in-person learning interfered with schools' ability to implement recovery efforts. Despite the difficulties, many relished the opportunity to reconnect with friends and colleagues in school buildings.

The Office of the Ombudsman for Public Education continues to remain grounded in its mission—to help resolve and mediate complaints, concerns, and other issues caregivers, families, and schools experience in DC public schools and DC public charter schools. In SY 2021-22, the Office expanded significantly to meet the demand for its services. The expansion includes a dedicated Special Education Assistant Ombudsman and an additional general Assistant Ombudsman. The Office also hired a full-time Program Support Specialist to assist with intakes to the Office.

The Office also launched a new initiative in partnership with the Office of the State Superintendent of Education (OSSE)--the DC Special Education Hub (the Hub). The Hub demystifies special education for the District's families and serves as their first stop for special education needs. The Hub's services include 1:1 support, resources, and training.

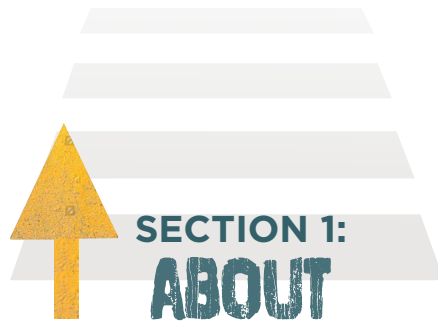
The Office is grateful for the expansion that allows us to meet the long-standing needs of DC families. As always, thank you for the opportunity to serve.

Warmly,



Serena M. Hayes





OUR TEAM

Office of the Ombudsman for Public Education

Serena M. Hayes, *Ombudsman for Public Education*

Jhoselin Beltran Contreras, *Special Education Assistant Ombudsman*

Hannah Blumenfeld-Love, *Special Education Assistant Ombudsman*

Crystal Williams, *Assistant Ombudsman*

Stephanie Arias, *Assistant Ombudsman*

Toni Criner, *Assistant Ombudsman*

Dierra Dupree, *Program Associate*

Whitney Jones, *Program Support Specialist*

DC Special Education Hub

Hannah Blumenfeld-Love, *Program Manager*

Anna Cook, *Communications and Community Engagement Coordinator*

Trianna Downing, *Program Support Specialist*

WHAT IS AN OMBUDSMAN?

The word “ombudsman” is derived from a Swedish word meaning “entrusted person” or “grievance representative.” The word has come to denote a trusted agent who looks after the interests of a group. In the United States, numerous public ombudsman Offices have been created—through legislative, executive, or judicial authorization—as independent agencies that monitor the delivery of services for specific populations.

OUR ROLE IN THE DC EDUCATIONAL LANDSCAPE

The Office of the Ombudsman for Public Education is an independent, impartial Office that helps parents and students resolve school complaints individually and collectively, transforming problems into solutions that compel systemic progress for all public education in D.C. As established by law, the Ombudsman’s mission is to be a “single Office” that coordinates “transparency and accountability” by helping D.C.¹ families navigate the five education agencies that govern and operate the public schools in D.C.

There are seven responsibilities described in our authorizing statute. The Office must:

1. Participate in outreach for the purpose of connecting with caregivers and families to inform them about our services;
2. Serve as a vehicle for communication between schools and families;
3. Receive, evaluate, and respond to education-related concerns and complaints;
4. Track data about the concerns and complaints that are brought;
5. Use the amalgamated data to identifying systemic concerns (or trends);
6. Make recommendations based on observed trends; and
7. Issue annual reports.

OUR PROCESS

Once a stakeholder contacts the Office, the following steps occur:

1. **Screening** – Verify that the complaint is within the Office's jurisdiction. The Office is prohibited from taking personnel action against school staff, providing legal advice, and intervening when the matter has already escalated to legal or administrative proceedings.²
2. **Intake** – Ask the stakeholders a series of questions that are recorded in our database.
3. **Investigation/Examination** – Contact the other stakeholders, i.e., school or Local Education Agency (LEA), to acquire supplemental information.
4. **Research** – When the Office does not already have an answer to a question, conduct research.
5. **Conflict Resolution and Solutions** – The Office might offer the stakeholder(s) any of the options that follow: information (including referrals), coaching, shuttled diplomacy, attending or facilitating a meeting, mediation.
6. **Close Case** – After achieving resolution, the case is closed. A resolution can be reached at any point throughout the process.

OUR VISION

The vision of the Office of the Ombudsman for Public Education is to provide quality conflict resolution and mediation services to families eligible to attend public schools in the District of Columbia and reduce barriers to accessing public education. The vision is to eliminate barriers to accessing public education for every eligible student in D.C. We envision a D.C. where everyone has access to quality public education.

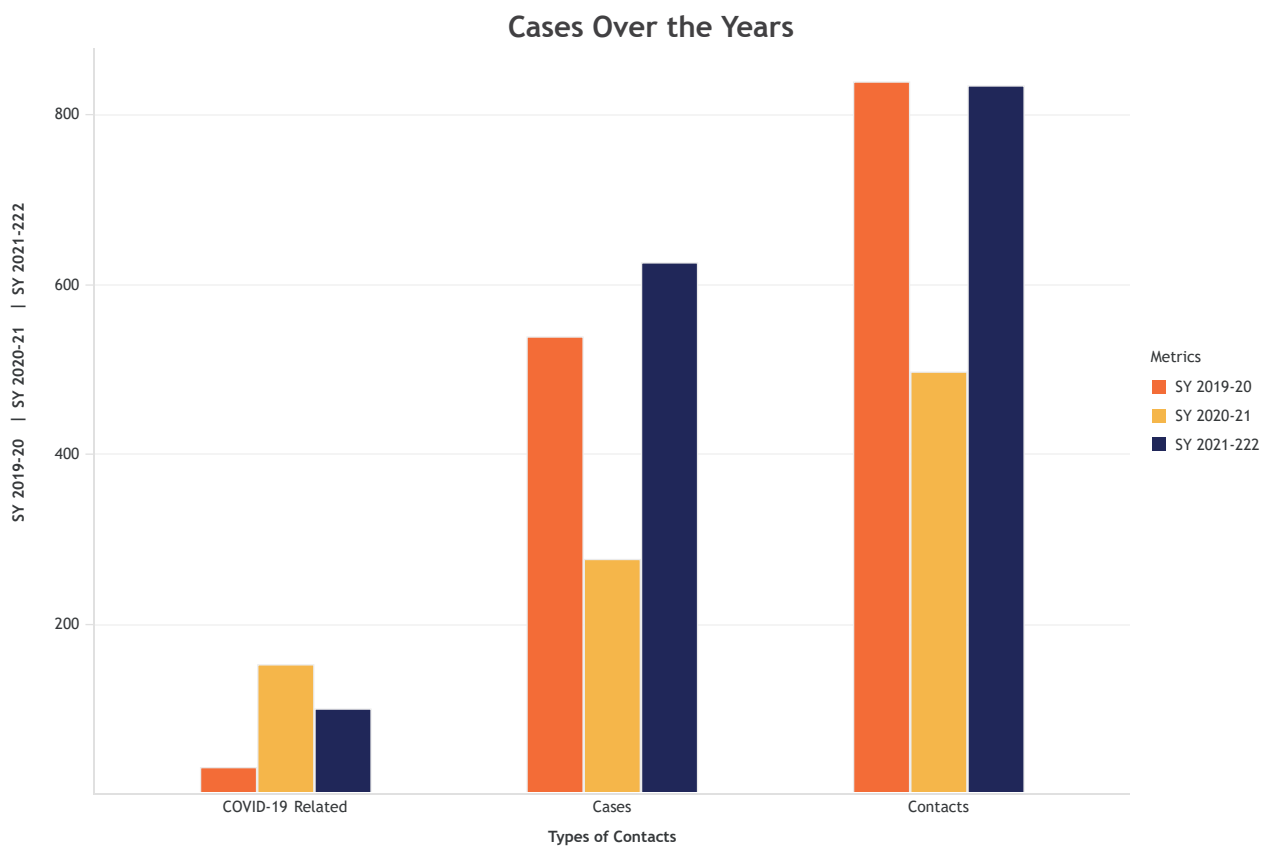
OUR GOALS

The Office's goals are to respond to concerns in a timely, caring, and productive manner; encourage effective communication between caregivers and schools; act as a source of early detection for emerging school system-wide issues; contribute to creative policy solutions by identifying and sharing trends we observe; prevent recurring problems and improve existing processes by contributing suggestions for systemic change; and reducing the need for administrative hearings and litigation by facilitating the informal resolution of education-related conflicts. ■



SECTION 2: THE DATA

As explained above, the statutory requirements of the Office of the Ombudsman include analyzing and reporting amalgamated data to (1) identify systemic concerns (or trends), (2) make policy recommendations based on the systemic concerns identified, and (3) produce an annual report. Accordingly, we have provided the amalgamated data and highlighted the systemic trends below.



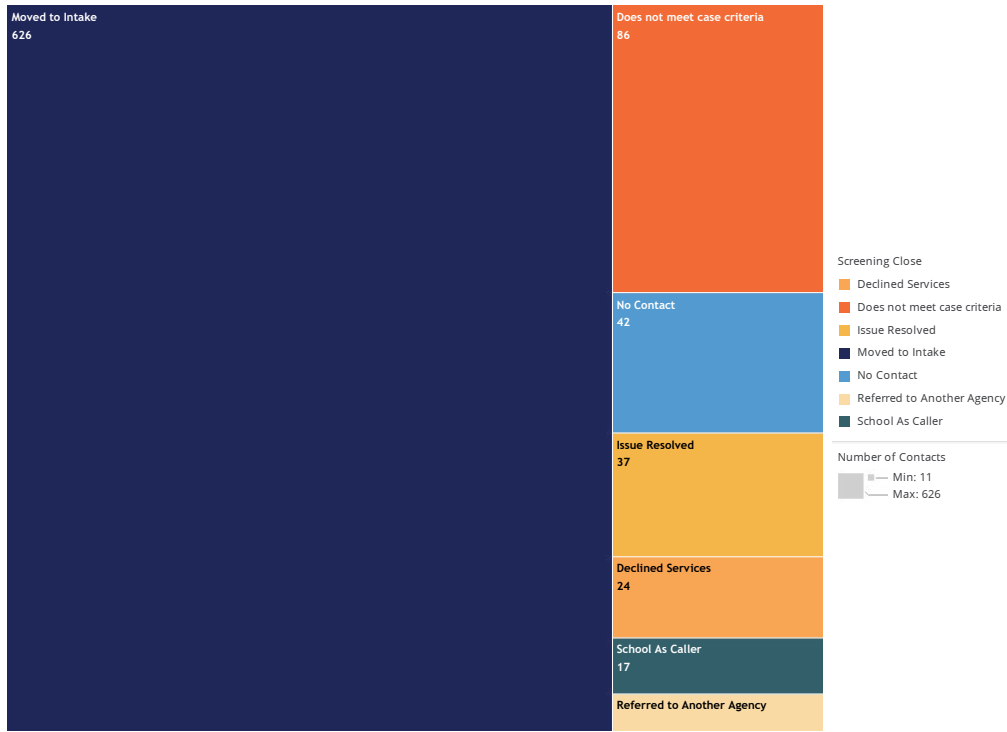
YEAR-TO-YEAR CASE COMPARISON

In School Year 2021-2022, the Office experienced increased contacts and cases. The Office received eight hundred thirty-four contacts (834) and handled six hundred twenty-six cases (626). Compared to SY 2020-21, the Office's contacts increased by approximately seventy-three percent (73%).

Only some contacts made to the Office become cases. In SY 2021-22, the conversion rate between contacts and cases was seventy-five percent (75%). In prior years, the conversion rate ranged between fifty and sixty percent (50-60%). While unsure of causation, the Office made organizational changes that may have contributed to the higher conversion rate. Notably, the Office hired a full-time program support specialist to answer phones, screen contacts, and conduct intakes. Before hiring a program

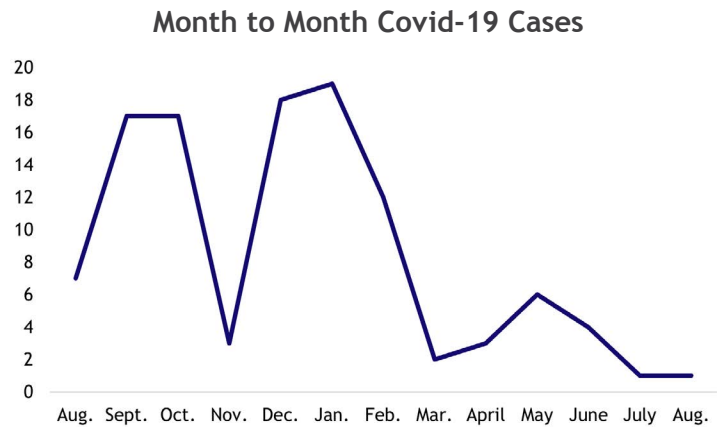
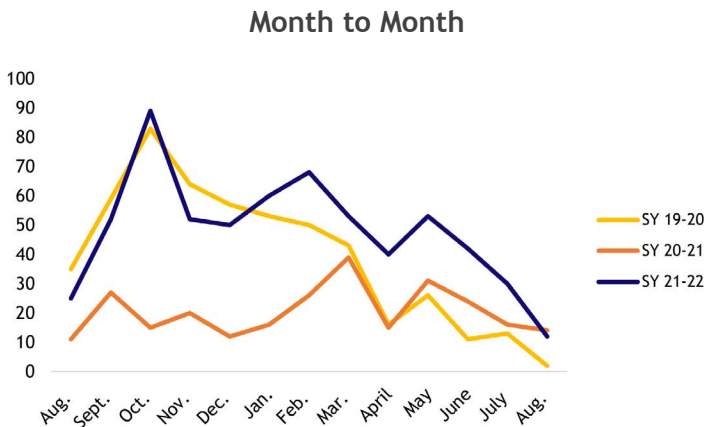
support specialist, the Office relied on part-time fellows to fulfill these responsibilities. Additionally, the Office received two additional assistant ombudsmen—one generalist and another devoted exclusively to special education concerns. The increase in staff has allowed the program associate to focus on administration rather than serving as a quasi-assistant ombudsman.

Case Screening



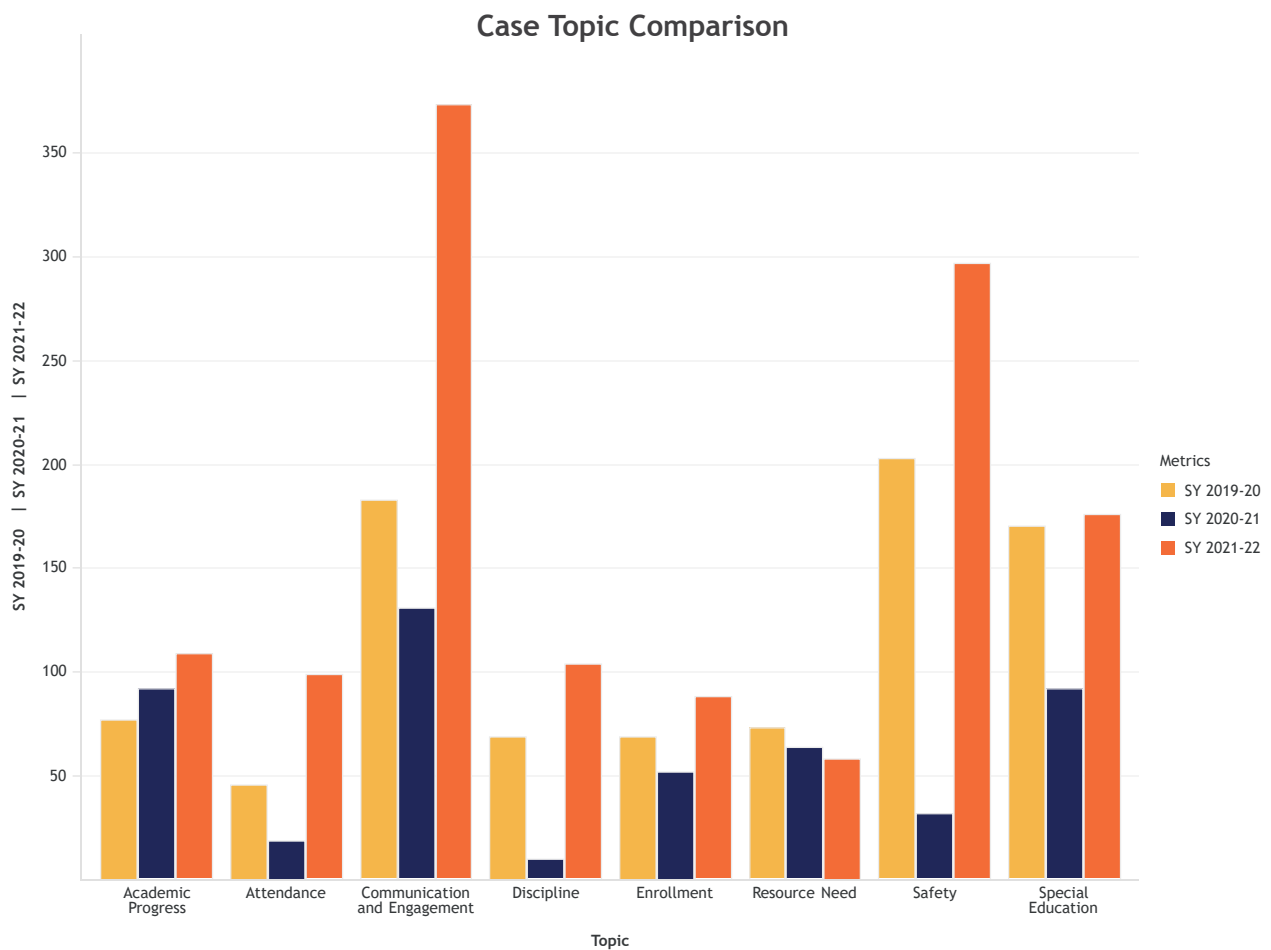
MONTH TO MONTH TRENDS

The month-to-month trends in cases SY 2021-22 are mainly consistent with previous years. However, there were two months of distinction: October and January. Since the pandemic began, the Office received a higher contact volume in those months than in any other school year. As depicted in the graph below, the volume increase during those months correlate with peaks in Covid-19-related concerns during the same two months.



CASES BY TOPIC(S)

Over the past three years, the most common concerns brought to the Office have shifted. In SY 2019-20, the most frequent topics included, Bullying and Student Safety, Communication and Engagement, and Special Education.³ However, in SY 2020-21 there was a decline in Bullying and Student Safety concerns. Instead, concerns about Academic Progress rose.⁴ In SY 2021-22, the most common topics returned to Communication and Engagement, Safety, and Special Education. Discipline concerns returned to pre-pandemic volume.



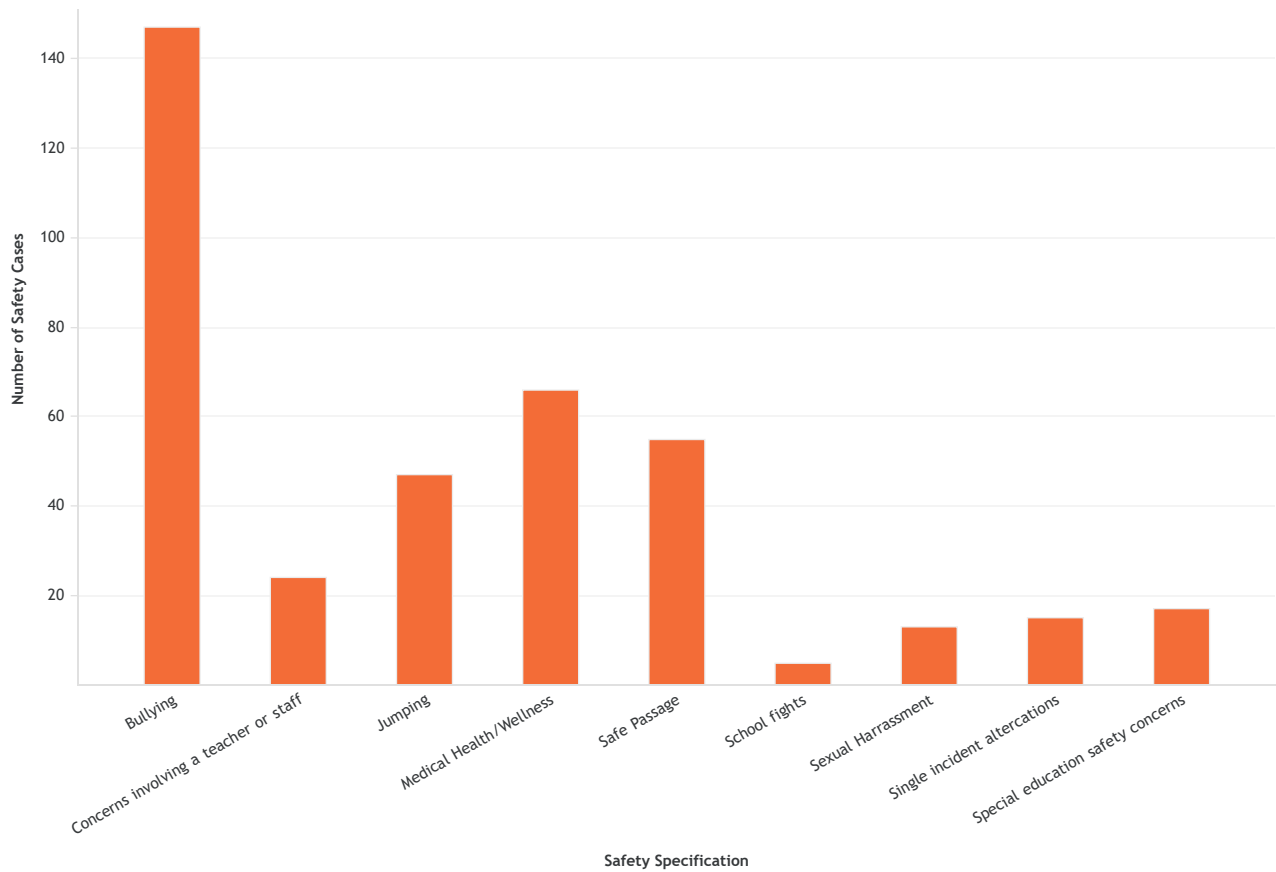
SAFETY

Due to the virtual posture of public education in SY 2020-21, concerns about student safety were significantly reduced. However, since the return to in-person learning, student safety cases have returned as a significant concern. In SY 2021-22, student safety cases comprised forty-seven (47%) of our casework, which is thirteen percent (13%) higher than in SY 2019-20.

Of the two hundred ninety-seven (297) safety concerns, Bullying and Medical Health and Wellness were the most frequent areas of concern. Medical Health and Wellness cases were primarily related to complaints about Covid-19 protocol. For example, in one case, a parent reported concerns with a staff member instructing their student to take a laptop to a classmate in the Covid-19 isolation room. The parent expressed concerns that their student was put at risk of contracting Covid-19. In another case, a parent was concerned about frequent quarantine mandates due to Covid-19 infections at their student's school.

Discipline, Special Education, and Attendance cases often accompanied safety concerns. About sixty percent (60%) of discipline cases, thirty-five percent (35%) of attendance cases, and roughly twenty-

Safety Specifications



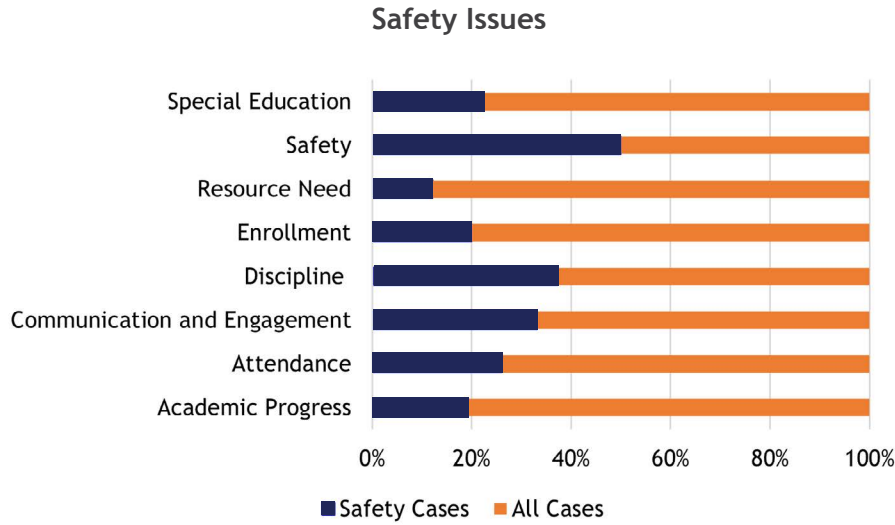
nine percent (29%) of all special education cases involved safety issues. In most cases where safety and discipline concerns overlapped, parents expressed frustration with two things: (1) The restrictions on the number of consecutive and cumulative days their student’s alleged aggressor could receive for an out-of-school suspension; and (2) Teachers or staff members who were aware that a student was the target of a bully, an altercation ensued, and the targeted student was suspended.

For example, students were waiting outside the school building to attack another student. A family member of the targeted student de-escalated the situation. The parent reported the incident to the school but felt the school did nothing to remedy the situation. Shortly after, there was a fight between the target and one of the aggressors. The target received a suspension. The parent disagreed with the suspension because her student was acting in self-defense. Additionally, the parent believed the incident could have been avoided if the school had addressed the bullying when it was initially reported.

In most cases where Safety and Attendance concerns overlapped, parents kept their student home from school because they feared their student was unsafe. Often the problem was that the parent feared their student would be exposed to Covid-19 or their student would continue to be antagonized by their bully. For example, a parent contacted the Office about her student who was in a fight twice in one week. The student was not formally suspended but was asked to stay home for their protection. The targeted student was out of school for weeks before the parent allowed the student to return. The same day the student returned to school, the aggressor attacked him. After that altercation, the parent decided to keep their student home.

Where Safety and Special Education concerns overlapped, parents expressed concerns about the physical safety of their student with a disability; many of the issues involved a student being unaccounted for. For example, a parent called after her student was injured multiple times at school. Her son was autistic, had Attention Deficit Hyperactivity Disorder (ADHD), and was nonverbal. Her child had come

home with scratches on his body and other injuries. The parent went to the emergency room on one occasion because her student had an open wound.



DISCIPLINE

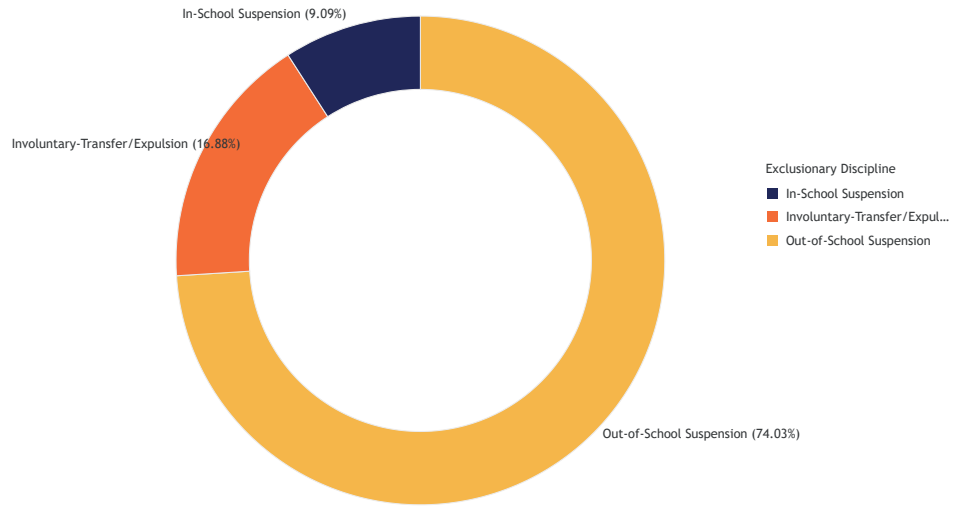
In SY 2021-22, discipline concerns represented approximately seventeen percent (17%) of our casework. There was a broad range of discipline concerns brought to our attention. For instance, we received a couple of complaints from the same school about a teacher forcing students with disruptive behavior to learn in a separate, different classroom from their assigned classroom.

The Office also received complaints about school pushout practices. For example, a parent whose student was involved in a physical altercation at school contacted the Office for help. The parent had met with the principal who provided two disciplinary options. First, the school told the parent they could withdraw the student from the school. The second option presented was the threat of expulsion. Once the Office intervened, the school recanted.

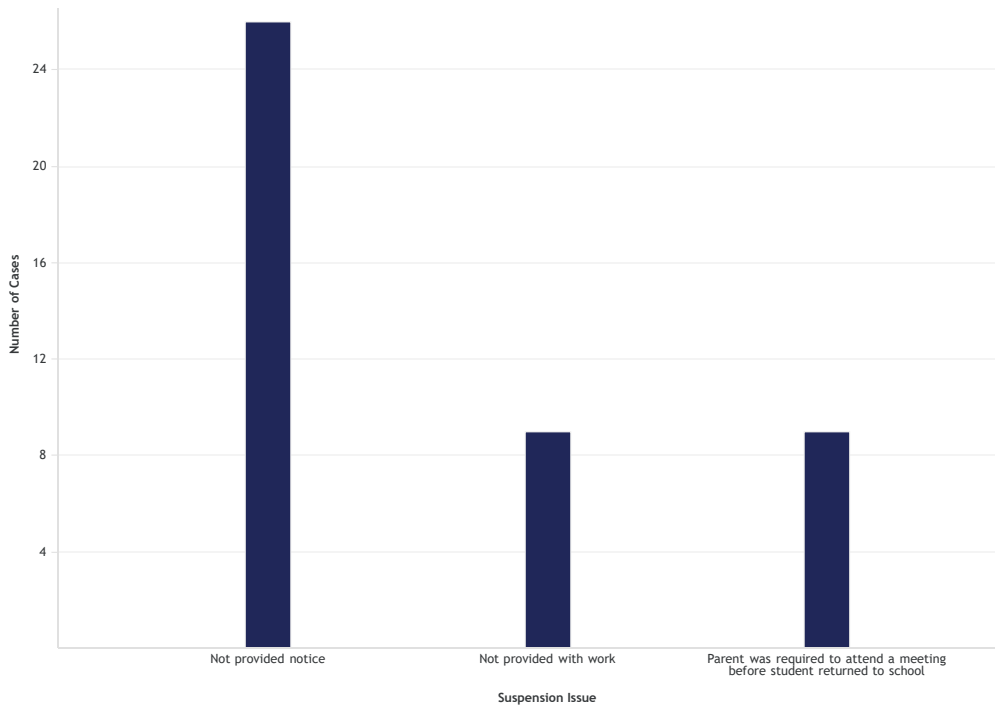
In another instance, a parent sought our help after a meeting with the principal. The parent’s student was involved in a physical altercation at the beginning of the school year. However, the primary discipline concerns were about out-of-school suspensions. The Office anticipated a rise in discipline concerns in SY 2021-22. An increase in disciplinary concerns was expected for several reasons. One reason is that students and teachers alike needed time to adjust to learning in person. Since students had been out of physical school buildings and some lost access to community resources schools often provide, we anticipated that the possible need for mental health support and social-emotional resources would cause an increase in behavior challenges that might lead to disciplinary action.

The second reason is that the Student Fair Access to School Act became fully effective in SY 2020-21.⁵ The Act limits schools’ use of suspensions, expulsions, and involuntary transfers as disciplinary consequences. The Office anticipated that schools would have challenges implementing the new policy. Almost two-thirds of our exclusionary discipline cases involved students who were suspended (either formally or informally). Schools suspended students without providing written notice, did not provide students with work during suspension, and required parents to attend a meeting before the student could return.

Exclusionary Discipline Categories



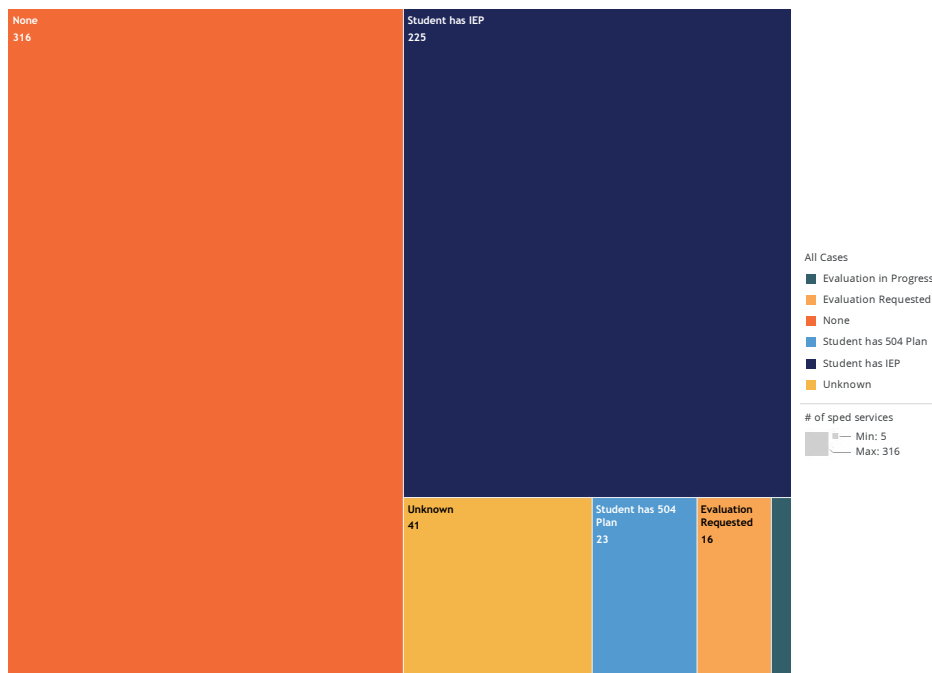
Exclusionary Discipline Concerns



SPECIAL EDUCATION

Like previous years, the amalgamated data from SY 2021-22 shows that students with disabilities are a key demographic of the Office of the Ombudsman. However, almost thirty percent (30%) of the concerns raised in SY 2021-22 related to some challenge or issue with special education.

Special Education Services

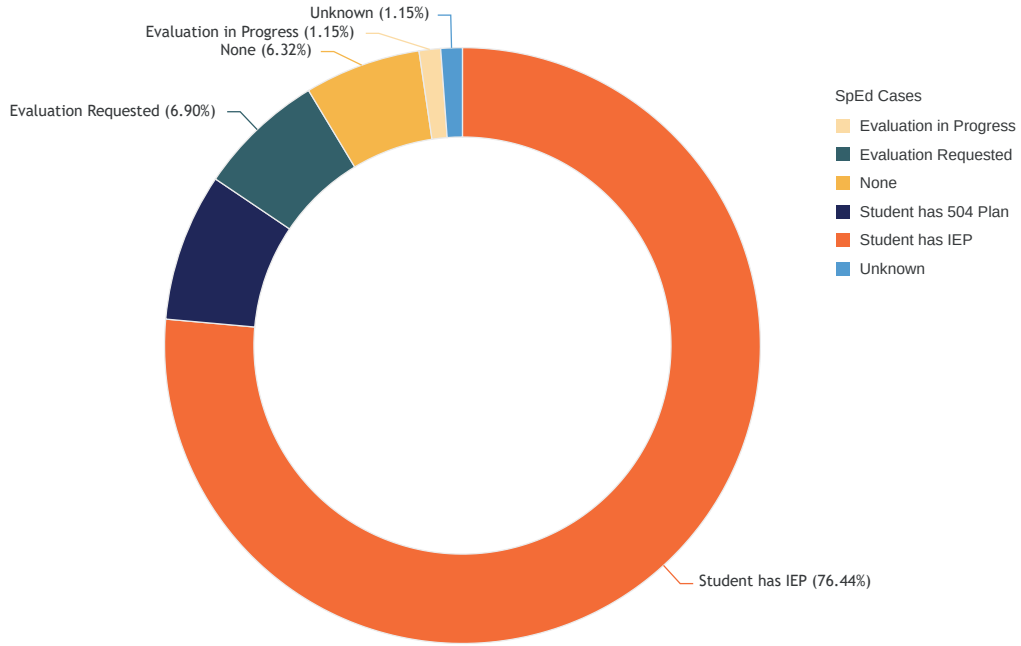


We further examined the types of special education concerns families shared. The data indicated that students with disabilities already having an Individualized Education Plan are typically the largest representation of special education concerns brought to the Office (76%). While there were variations in the types of complaints amongst challenges with IEP implementation, there were some observed trends. One such trend involved consistent complaints about students not receiving related service hours. Most frequently, the related service that was not provided was speech and language services. For example, we often received cases where speech therapy services were not provided because of shortages of speech and language therapists. In addition, communication challenges between special education teams and families, exacerbated family frustration. For example, some schools did not inform parents that the speech therapist transitioned from the school, and consequently, the student had not received services.

Some families shared concerns about dedicated aides. Most often, parents shared that their student previously had a dedicated aide in their IEP. However, at some point, the dedicated aide was removed from the IEP. As a direct consequence of removing the dedicated aide, the student is experiencing challenges. For example, in one instance, a parent shared that the removal of a dedicated aide from her student's IEP caused an increase in behavior challenges when the student became aggressive towards other students in school.

Other concerns with IEP implementation included students with self-contained classroom designations in their IEP being pushed into general education classrooms because of teaching shortages. We also received complaints from families looking to change the least restrictive environment for their students from less restrictive to more restrictive. In these situations, families sought smaller class sizes to better support their students' learning.

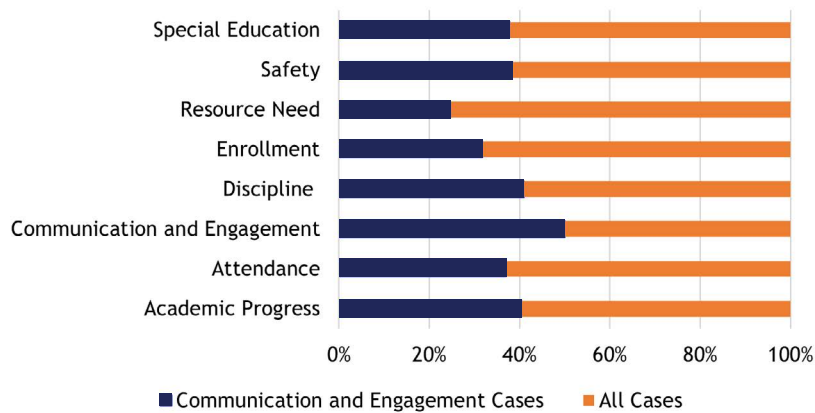
Special Education Cases



Communication and Engagement concerns were identified in over fifty percent (50%) of cases. Thirty-five cases noted Communication and Engagement as the only issue. An example of a single-issue communication complaint is when a parent received letters from his student’s school in Spanish. However, the parent only understood English. In this case, we contacted the school and asked them to switch the caller’s language preference to English.

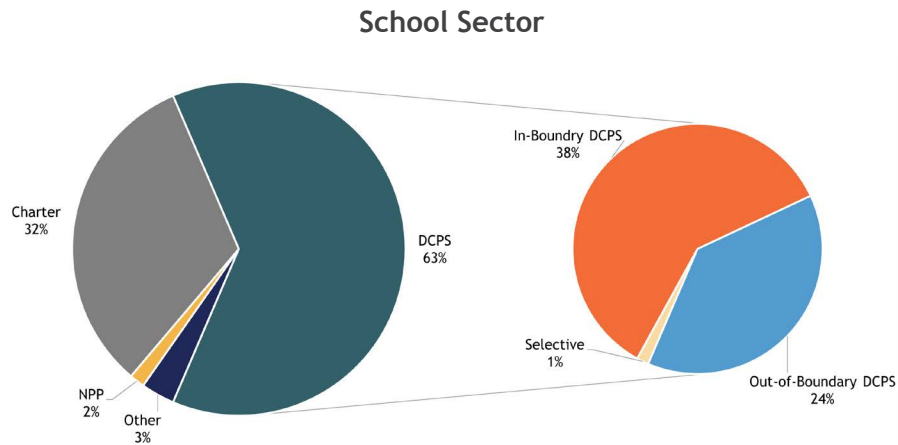
The graph below shows the overlap between communication concerns with other topics. For example, Communication and Engagement concerns were often accompanied by Discipline, Safety, Academic Progress, Special Education, and Attendance concerns.

Communication and Engagement Issues



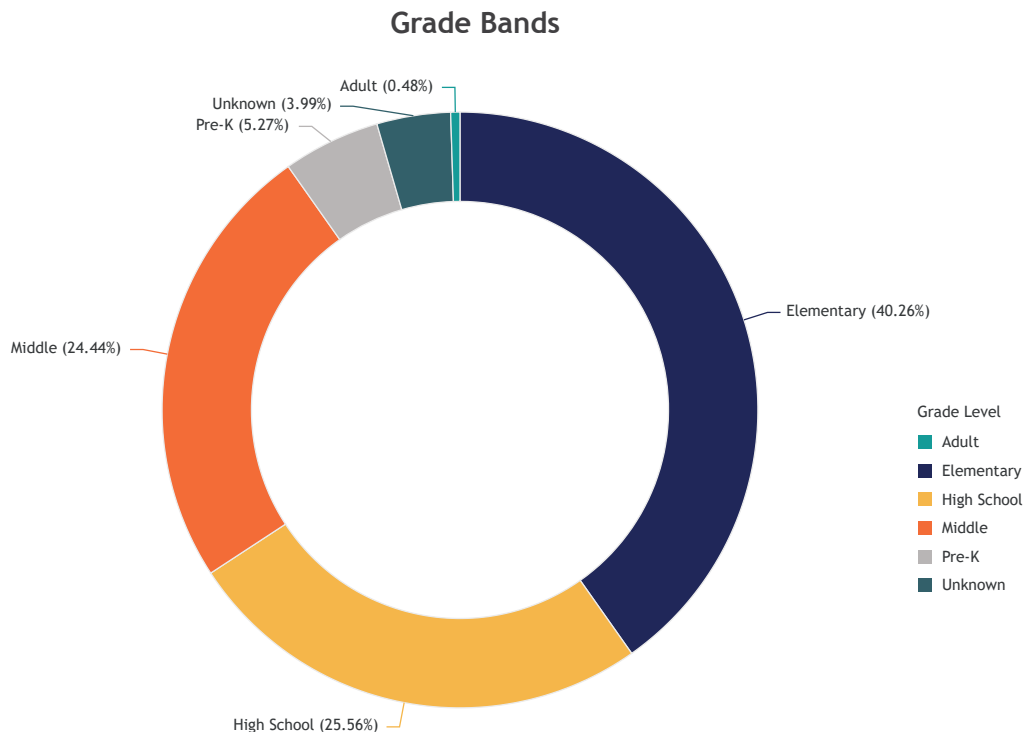
SCHOOL SECTORS

Each year the Office manages cases from families attending public and public charter schools, and students attending non-public placement schools. DCPS is typically overrepresented in the Office's data (63%). Regarding DCPS cases, there is a noticeable split between in-boundary DCPS cases and out-of-boundary cases. While in-boundary DCPS schools represented about forty percent (40%) of cases, out-of-boundary cases represented just a fourth. Public charter schools are often underrepresented (32%). In addition, selective schools represented just one percent (1%) of the DCPS population regarding cases. Other represents individuals who requested our assistance but had already graduated from the school system or who declined to identify their student's school.

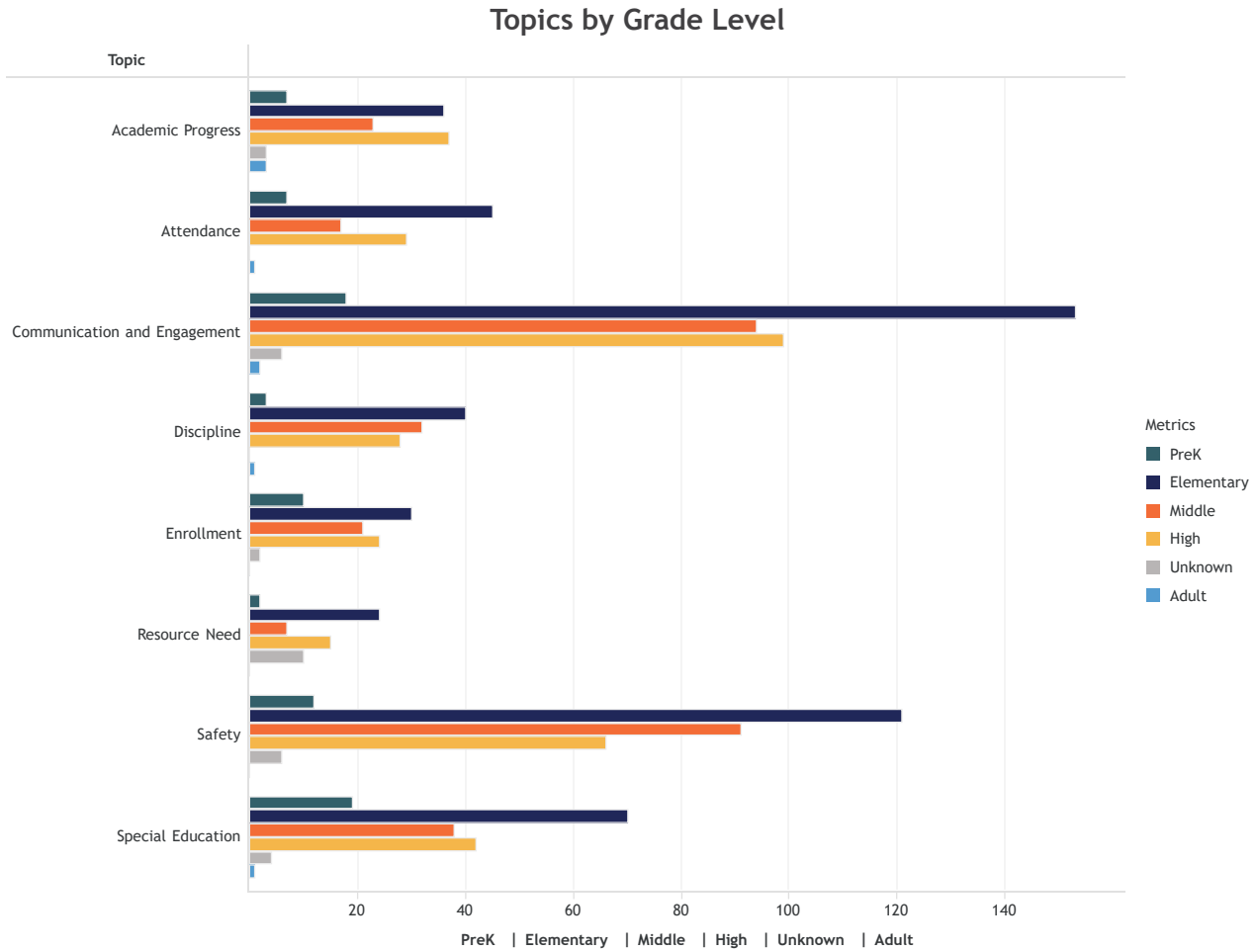


OVERALL GRADE BANDS

The SY 2021-22 grade bands mirrored the metrics of the 2019-20 school year apart from Pre-K cases. Since 2019-20, cases for pre-K students have declined. In SY 2019-20, pre-K cases represented eight percent (8%) of the data.⁶ In SY 2020-21, pre-K only represented four percent (4%) of cases and five percent (5%) the following year.⁷



TOPICS BY GRADE BANDS



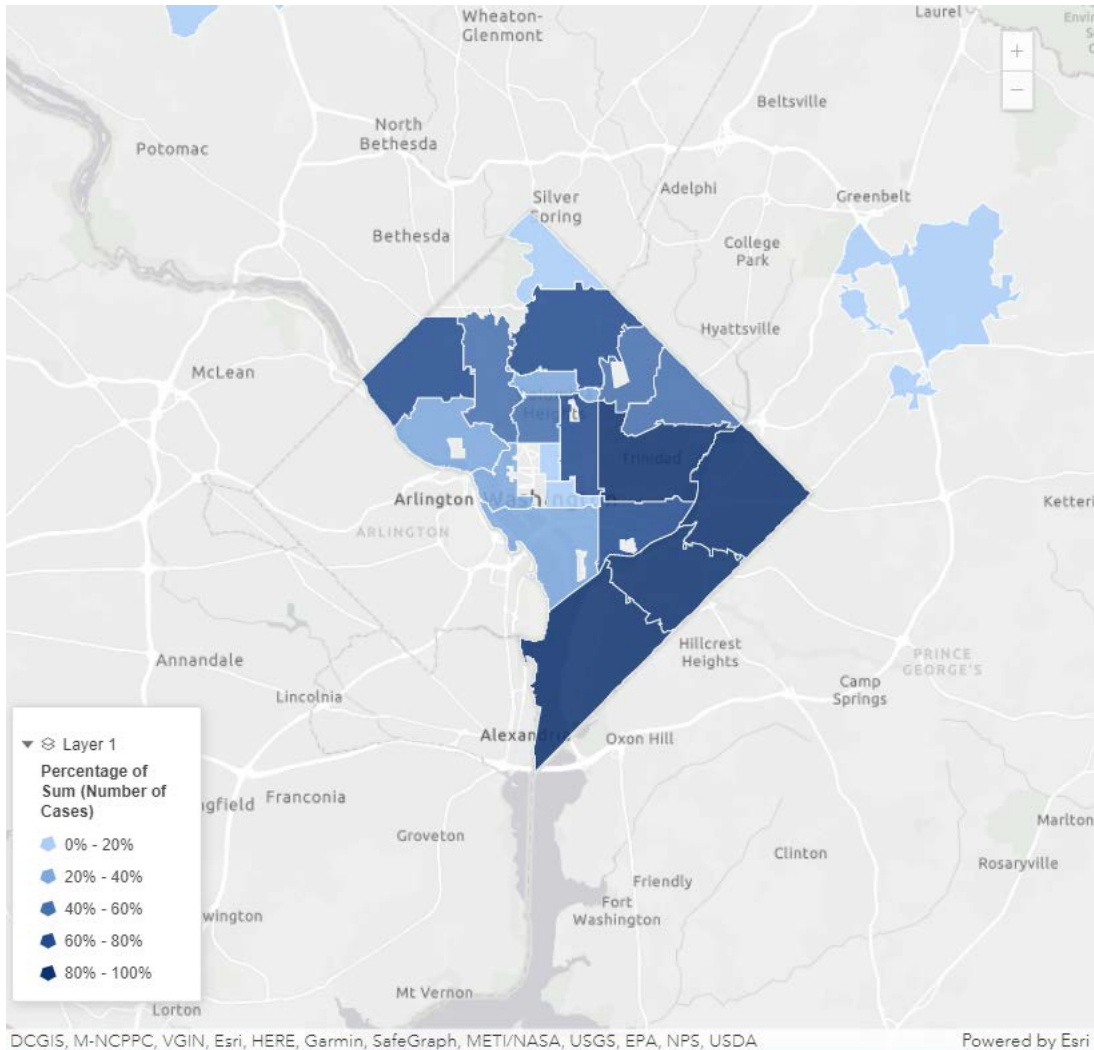
Our most common topics by grade bands in SY 2021-22 reflected the most common issues of SY 2019-20. These topics included Communication and Engagement, Safety, and Special Education. However, within Communication and Engagement were a significant number of Covid-19-related cases among the middle and high school population.

In December 2020, the US Food and Drug Administration approved emergency use authorization for Americans aged sixteen (16) and over and then for Americans twelve (12) and over in May of 2021.⁸ The Office experienced an influx of calls from caregivers who shared concerns regarding their unvaccinated students. Many parents expressed that their unvaccinated students experienced discrimination. For example, a parent was frustrated with Covid-19 guidance requiring only unvaccinated students to quarantine after identification as a close contact. The student missed two months of school due to exposure. The parent's student was not provided with work to complete while at home. The parent believed increased safety protocols were needed. The parent also believed that the school's policy to only require unvaccinated students to quarantine was discriminatory and unfair.

SCHOOL WARDS

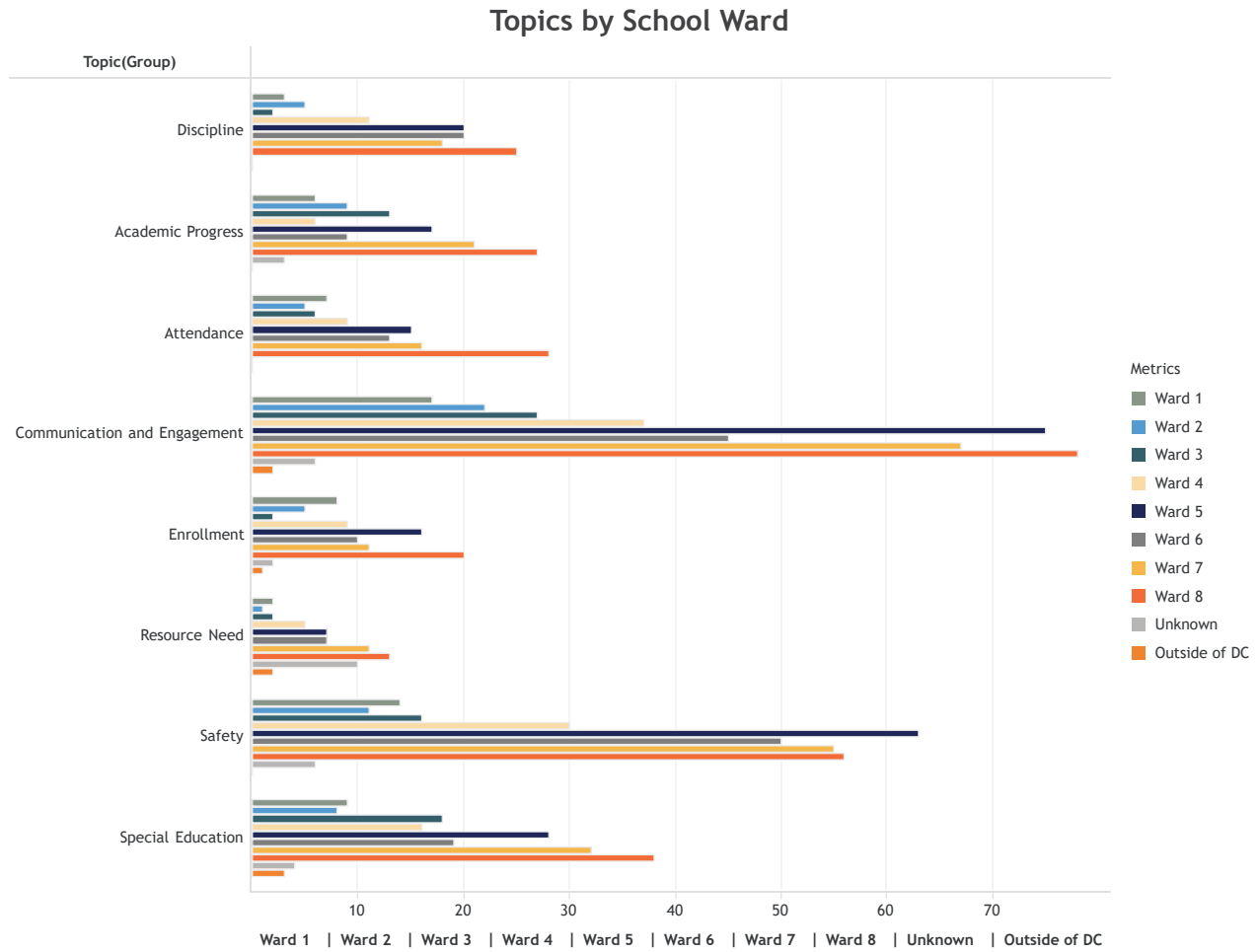
According to the Office of the Deputy Mayor for Education, public school enrollment in the District is highest in Ward 5, followed by enrollment in Wards 4 and 8.⁹ By sector, Ward 4 has the highest enrollment in DCPS schools. Ward 3 does not have any charter schools. Enrollment in charter schools, however, is most significant in Wards 5 and 8. Despite this data, the Office received the most cases from families enrolled in schools in Wards 5, 7, and 8.

School Wards



TOPICS BY SCHOOL WARD

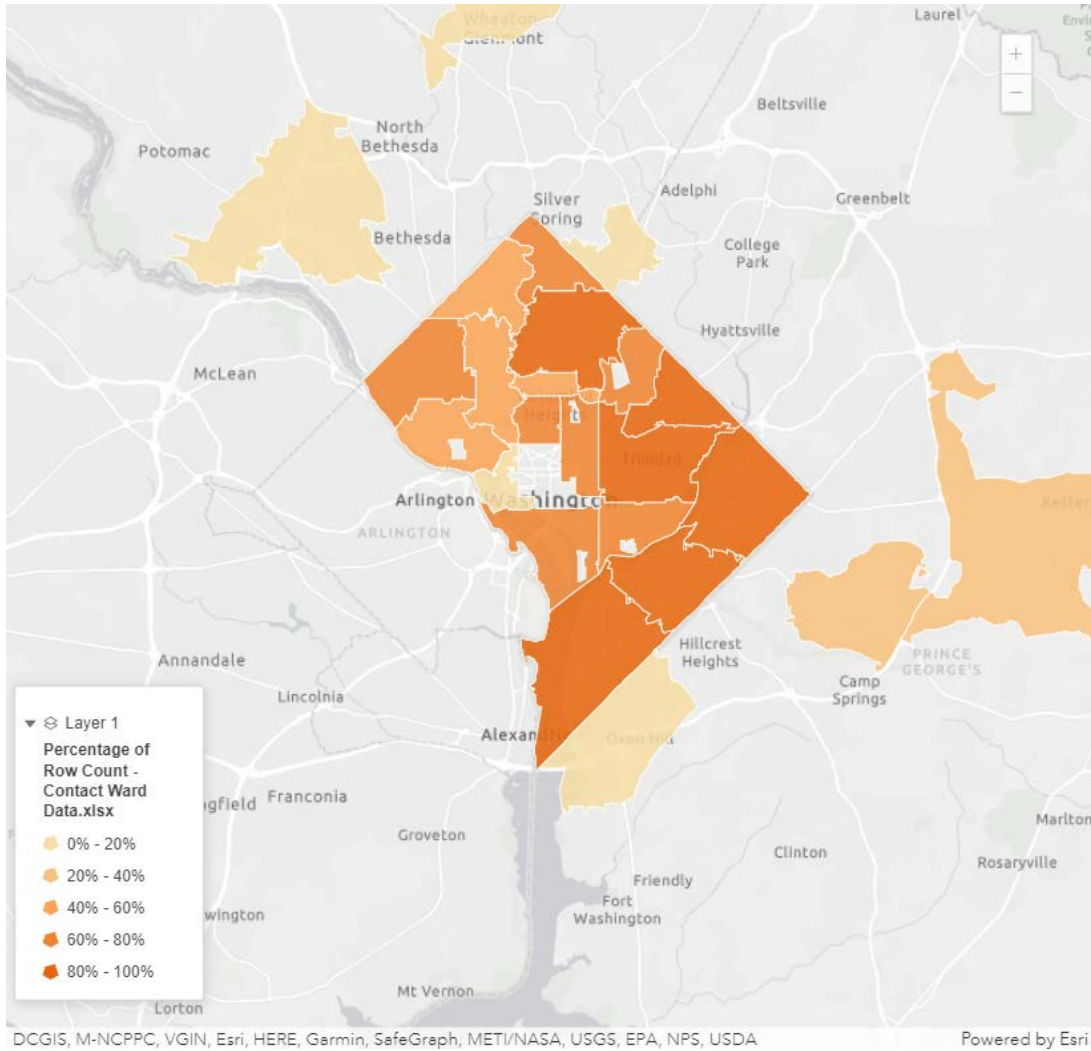
Ward 5 schools had the most safety concerns. Ward 8 had the most cases for all other topics. Ward 4 tied with Ward 1, having the least amount of academic progress concerns.



CONTACT WARDS

The Office received the most contacts from Wards 5, 7, and 8, which is expected given that those wards house the most households with children. According to [DC Health Matters](#), Ward 5 represents almost fifteen percent (15%) of the District's population, with more than 8,000 or twenty percent (20%) of households with children. Ward 7 represents almost 11,000 or thirty-four percent (34%) of families with children. Ward 8 houses the largest population of households with children, more than 11,500 or nearly thirty-eight percent (38%) of households with children.¹⁰

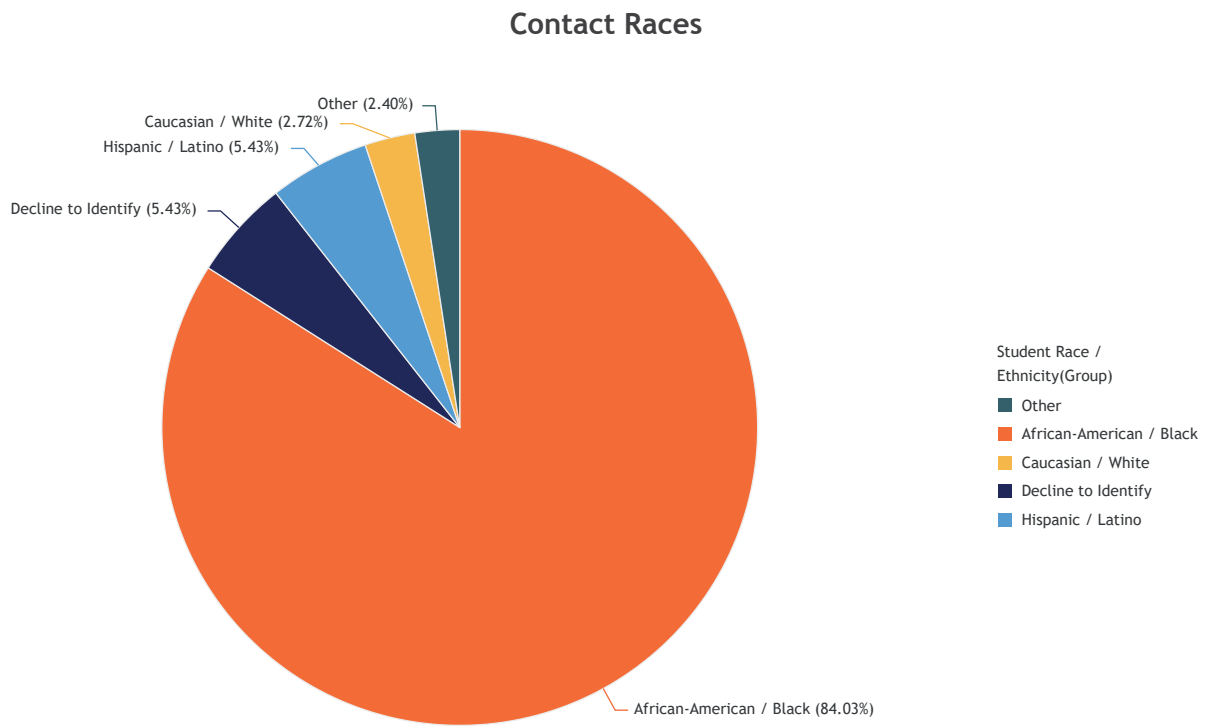
Contact Wards

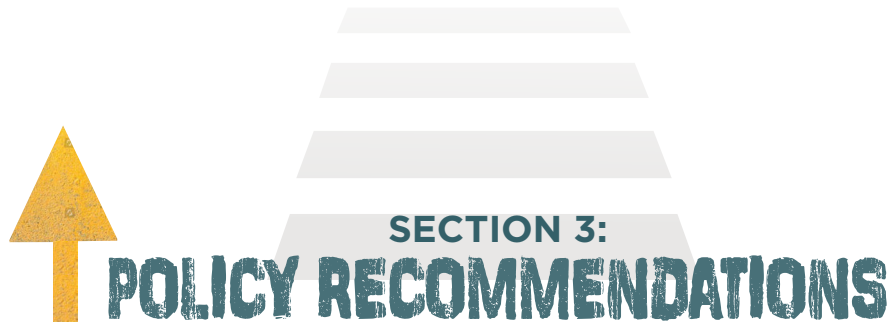


CONTACT RACES

African American/Black families remain the population with the most cases within the Office. This trend has remained consistent since the inception of the Office. More notable, however, is the increase in cases in the SY 2021-22 school year.

Within the last three school years (beginning with the SY 2019-20), the Office experienced an average of 66% of cases from African American/Black families. This year's number increased by almost a fifth to 84%.





SECTION 3: POLICY RECOMMENDATIONS

When reviewing the amalgamated data each year, we search for the story within the datasets. Understanding that each case becomes part of the larger story, we allow the collective stories to guide us to the issues at the forefront of the minds of students and families when developing policy recommendations. The policy recommendations below connect directly to the data trends we examined during School Year 2021-22.



Looming discipline concerns after full implementation of the Student Fair Access to School Act

When we examine the data, the Office frequently observes connections between various topics and sub-topics we track. When families express discipline concerns, they often overlap with safety concerns and student mental health needs.

DISCIPLINE

In the District of Columbia, discipline is governed primarily by two local laws: Student Fair Access to School Amendment Act of 2018, D.C. Official Code § 38-236.01 et seq. and 5-B DCMR § 2500 et seq. - Student Discipline (Chapter 25). The Student Fair Access Act governs both D.C.'s public and public charter schools.¹¹ In comparison, Chapter 25 application is exclusive to D.C. Public Schools.¹²

The Student Fair Access Act limits exclusionary disciplinary action. The exception is when the “student has willfully caused, attempted to cause, or threatened to cause bodily injury or emotional distress to another person.”¹³ The goals of the Student Fair Access Act include ensuring that students are not suspended or expelled for age-appropriate behavior and increasing the use of restorative and conflict resolution practices when appropriate. Another goal of the Act is to ensure that exclusionary discipline does not disconnect students from academic learning.

The Student Fair Access Act restricts the number of days a student can receive a suspension. For kindergarten through fifth-grade students, the maximum number of consecutive days of suspension is five. The maximum number of cumulative days of suspension for students in grades sixth through twelfth is ten. With noted exceptions within the Act, no student—regardless of the student's grade—can be suspended for more than twenty cumulative days within an academic year.¹⁴ In addition to shortening the length of out-of-school suspensions, the Student Fair Access Act subjected charter school local education agencies to some of the same procedural requirements and protections that Chapter 25 established for D.C. Public Schools.

For example, the Student Fair Access Act requires schools to describe procedures for communicating with families and students about disciplinary actions. The Act also requires schools to outline the due process rights and procedures available to students and families.¹⁵ Additionally, the Fair Access Act prevents out-of-school disciplinary consequences for unexcused absences or late arrival to school.¹⁶ Finally, the Act protects students' right to receive coursework and earn credit towards graduation and promotion during suspensions.¹⁷ These requirements and processes were already clearly articulated within Chapter 25 and therefore, already required of D.C. Public Schools. However, after the Student Fair Access Act became effective, public charter schools had to adopt disciplinary policies aligned with the Act.

Despite the goals of the Student Fair Access Act, the Office received numerous complaints from families about disciplinary actions that violate the Act. We received complaints from families about their student receiving a suspension but not receiving written notice (as required by Chapter 25) of the suspension—including no notification of the suspension’s duration, nor did the student receive coursework to complete during the suspension.

In another instance, a student received verbal (informal) notice of his suspension because of engaging in a physical altercation. When the student attempted to return to school, the school refused to admit him. Instead, the school informed the student that he must enroll in his in-boundary school. When the parent attempted to enroll the student at the in-boundary school, the in-boundary school refused to enroll the student. Enrollment at the neighborhood school did not occur until our office connected with the placement team within DCPS central office. The student received no notice of disciplinary action or involuntary transfer. The originating school failed to provide the required notice, implement any protective provisions within Chapter 25, and denied the student due process rights. The student missed an entire month of school. The student acquired unexcused absences because the originating school denied allegations that it had informed the student that he could not return.

In yet another example, we worked with a family whose student received a three-day suspension. The student nor the parent was issued any written notification of the suspension. Part of the challenge, in this case, was the discrepancies between the school’s representation of the code of conduct violation and the student’s account of what transpired.

According to the school, the student’s suspension was due to a verbal altercation with school staff. According to the student and parent, no verbal altercation occurred. Instead, the student left school without authorization before the end of the school day. Under the Student Fair Access Act, leaving school without permission is not a Tier III offense. The suspension was not warranted if the school believed the student and family’s accounts.

Moreover, the student suffered a traumatic loss from the death of a close relative. The parent requested grief counseling services from the school repeatedly. The school did not provide the requested services. Both Chapter 25 and the Student Fair Access Act encourage schools to approach student discipline holistically, including consideration of other more appropriate interventions (including in-school disciplinary options), social and emotional development, mental health, multi-tiered systems of support, and restorative justice. Unfortunately, it is unclear how these steps were taken.

Application of the Student Fair Access Act across LEAs was inconsistent. The inconsistencies in the application of the Act and Chapter 25 may have resulted from numerous factors. Implementation of the Act for high school students began in SY 2020-21. At that time, however, most schools were in a virtual posture. Schools were focused on improving virtual learning and could not prepare to implement the Act. Also, while many anticipated student bullying, trauma, and mental health needs would be critical as students returned to in-person learning, teacher and staff shortages made it difficult for schools to implement behavior practices consistent with law and policy.

DISCIPLINE AND THE COMPLICATION OF VIRTUAL LEARNING

In SY 2021-22, there were no guidelines for the use of virtual learning as a disciplinary consequence or behavior management tool. The absence of guidance further complicated the implementation of discipline policies. We observed schools using virtual learning to address discipline and safety concerns while keeping students enrolled in in-person learning programs. Most of these incidents occurred at the end of the school year. No end date was established for when the student(s) would return to in-person learning. In one case, the student was allowed to participate in virtual learning, but the school did not implement the student’s Individualized Education Program (IEP) while the student learned from home.

On July 29, 2022, Office of the State Superintendent of Education (OSSE) released guidance on using routine and situational distance learning.¹⁸ Before OSSE released this guidance, the Office planned to recommend that said guidance be created and released. According to the guidance,

“All public and public charter schools may use situational distance learning when circumstances prohibit a school from providing instruction due to some temporary emergency need. Such a need may be to address an unplanned emergency circumstance

(i.e., public health response, operational issue, weather, etc.). Schools may use situational distance learning for the entire school, for individual groups of students, for example, in classrooms or grades, or for an individual student.”¹⁹

The guidance provides LEAs with boundaries and expectations of the scope of virtual learning. However, some questions about situational distance learning still need to be answered. For example, there is confusion on how situational distance learning, when used for “individual groups of students” or “an individual student,” connect with student discipline. It is unclear whether situational distance learning is unilaterally initiated and determined by schools or whether caregivers can request situational distance learning. Finally, it is also unclear if situational distance learning is prohibited from use for disciplinary—or a safety emergency related to a behavior code violation, such as group fights. The guidance should address these issues explicitly. Any local education agency policy created as a result of this guidance should also explain who has the authority to issue situational distance learning.

ARE INVOLUNTARY TRANSFERS DISCIPLINARY ACTIONS?

Another issue that arose in our discipline cases was involuntary transfers. Confusion existed around how involuntary transfers fit—or whether they fit at all—within the discipline landscape. The Student Fair Access Act defines “disciplinary unenrollment” as “expulsion or involuntary transfer of a student from a school.”²⁰ “Involuntary transfer,” as defined in the Act, means “the removal of a student from the student’s school of enrollment for disciplinary reasons for the remainder of the school year, or longer, and the student’s enrollment in another school within the same local education agency, in accordance with local education agency policy.”²¹ Finally, “expulsion” under the Act is “the removal of a student from the student’s school of enrollment for disciplinary reasons for the remainder of the school year or longer, in accordance with local education agency policy.”²²

In contrast, Chapter 25 contains no definition for “involuntary transfers.” However, Chapter 25 states: “Except for those corrective and disciplinary measures permitted pursuant to § 2408 of this title, involuntary transfers pursuant to Chapter 21 shall not be used as a disciplinary response.”²³ Note that § 2408 pertains to Uniform and Dress Code violation and is largely irrelevant to this conversation. This is where the confusion begins between involuntary transfers, as understood in DCMR—Chapter 25 and Chapter 21.

Chapter 25 prohibits the use of involuntary transfers as a disciplinary response. The Student Fair Access Act limits involuntary transfers for disciplinary reasons;²⁴ this is also the very thing that Chapter 25 explicitly prohibits. Thus, the Student Fair Access Act may not actually provide further prohibitions on involuntary transfers than Chapter 25 itself.

Involuntary transfers are codified in DCMR, Chapter 2107 – Involuntary Transfers. The law states in relevant part--

2107.1 A student shall not be involuntarily transferred without receiving notice of the reason for the transfer and an opportunity for a hearing prior to the proposed transfer pursuant to the hearing provisions of Chapter 25

2107.5 It shall be the responsibility of the principal or other school official recommending a proposed involuntary transfer to notify the student, parent, or guardian, and principal of the school to which the proposed transfer will be made. The principal or school official shall include notice of hearing rights and procedures in the notice of proposed transfer.²⁵

Involuntary transfers under Chapter 21 are non-disciplinary actions. However, schools have used involuntary transfers and circumvented intervention requirements under the Student Fair Access Act. Our office worked with a family who received notice of an involuntary transfer. We connected with the school and learned that it had not implemented academic or behavioral success plans to support the student’s needs and address the behavioral concerns, nor had the school used the multi-tiered systems of support provided by DCPS’s mental health team to address the problem.

Whether a student is subject to involuntary transfer for disciplinary or non-disciplinary reasons, the student and family are entitled to notice and a hearing. The hearing process for both is governed by Chapter 25. The due process triggers are identical. However, the most significant difference is the requirement to provide interventions before any involuntary transfer. However, to our knowledge, no other information regarding involuntary transfers has been made available to the public. No guidelines with examples of non-disciplinary situations where involuntary transfers were necessary, beneficial, and valuable to the school community are available. Moreover, when the Office intervened in disciplinary matters, many families were never informed of their right to a hearing.



RECOMMENDATION

School districts can improve the implementation of discipline policies within schools. However, the policies themselves need updates before discipline policy implementation can improve. Discipline policies should clearly outline the steps school administrators must take before suspending students, including the responsibility and timeline for providing written notice to caregivers and describing student and family due process rights. This information should be widely available on school websites in family-friendly language. These recommendations are not original, and the Student Fair Access requires them. However, from our experience in SY 2021-22, student discipline policies were unclear and merely restated the Student Fair Access Act requirements without explaining how schools are to apply the provisions. This created confusion and inappropriate implementation of the Act. Moreover, any revised discipline policy should explicitly explain the differences between non-disciplinary involuntary transfers in Chapter 21 and involuntary disciplinary transfers as referenced in the Act.

As schools implement improved disciplinary policies that align with the Act, the Office also recommends expanding behavior supports and available interventions by providing increased training and resources to school staff and students. School districts should consider initiatives to intentionally develop staff buy-in to restorative practices by, for example, sharing positive experiences across school teams. Additionally, creating an evaluation form that allows students and caregivers who participate in restorative processes to provide feedback on the quality of services and recommend growth opportunities could improve existing services.

Finally, after Covid-19, many students and families still experience lingering trauma. Given the trauma students and families experienced, schools should re-evaluate the multi-tiered support systems (MTSS) for mental health. When many students in a class are not meeting benchmark academic expectations, the educational standard is often re-taught using a different strategy, and students receive additional practice to develop mastery. Similarly, because many children ensured loss and trauma during distance learning, schools should consider applying Tier 2 strategies at the Tier 1 level so that all students can receive the mental health support they need.

SPECIAL EDUCATION TEACHER AND RELATED SERVICE PROVIDER RETENTION

Students with Individualized Education Programs (IEPs) receive special education and related services. Related services include but are not limited to “speech-language pathology, audiology services, psychological services, physical and occupational therapy, and counseling services.”²⁶ IDEA’s full requirement for specifying a child’s related services in their IEP appears at §300.320(a)(4) and stipulates that each child’s IEP must contain:

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section... [§300.320(a)(4)]

School districts must provide each student with a disability within their jurisdiction an appropriate education, regardless of the nature or severity of the disability. They work towards attaining the measurable annual goal set in the IEP by providing related services and special education. Circumstances like staff changes and turnover can create gaps in student accommodations, resulting in denying a student a free and appropriate education (“FAPE”). Teacher retention is a national public education concern for general and special education instructors. The Office observed the impact of retention challenges on special education students and families.

In SY 2021-22, some students did not receiving required related services. After discussing concerns with special education coordinators, we learned that many schools had related service provider vacancies and could not provide students with required related services due to hiring teachers and related service providers shortages. According to the American Association for Employment in Education and Related Services, critical shortages of special education teachers and related services personnel exist in all regions of the country and have existed even before the pandemic.²⁷ Nationally, large caseload sizes lead to burnout which sometimes cause mid-year vacancies in these positions.²⁸ On top of the related service provider shortage, schools are also experiencing a special education teacher shortage.

For example, the Office oversaw a case where a parent was confused because their student’s teacher reached out, concerned that the student had not received related services for weeks. The parent had just had an IEP meeting with the school that same week, and the IEP team did not mention missed services. After requesting another IEP meeting, the IEP team confirmed with the parent that the student was not receiving services because the related service provider had quit. In the meantime, the school was looking to hire a new staff member. The student was without services for multiple weeks and was non-compliant with the student’s IEP. Eventually, the school was able to obtain a new specialist. The school provided an additional hour of makeup services to the student because of the service gap. However, the solution was imperfect, as it also caused the student to miss an extra hour of classroom instruction weekly while receiving the makeup services.

In another case, a parent received written notification from the LEA regarding a related service provider vacancy. The parent attempted to discuss a plan for compensatory hours for the missed services with the school. The school, however, did not respond. As a result, the matter escalated to a formal administrative process. The Office has found that the LEA’s direct failure to provide the related service and the school district’s failure to proactively plan for compensatory education services led to due process escalation.



RECOMMENDATION

To address the challenges we have observed with special education teacher and related service provider retention, we recommend that schools take a direct approach with caregivers and inform them immediately when a staff member transitions resulting in the suspension of specialized instruction. Schools should proactively recruit and contract high-quality private practitioners to fill staff vacancies and minimize service disruptions. Within the notification to caregivers, school districts should outline their projected timeline for hiring another specialist and calculate the hours of anticipated substitute hours provided by the contracted provider. After making a reasonable effort, schools that cannot contract with a private practitioner must include in their notice the calculation of anticipated missed hours and an implementation timeline and schedule for the recovery of missed hours. The latter can either be recovered once the position is filled or through compensatory services. The notice should include information to caregivers on their ability to request compensatory services.

Such recommendations have precedent. Illinois, for example, implemented its notification policy in 2019. Illinois' Public Act 101-0515 states:

“If a child’s individualized education program team determines that certain services are required in order for the child to receive a free, appropriate public education and those services are not administered within 10 school days after a date or frequency set forth by the child’s individualized education program the team’s determination, then the local education agency school board shall provide the child’s parent or guardian with written notification that those services have not yet been administered to the child. The notification must be provided to the child’s parent or guardian within 3 school days of the local education agency’s non-compliance with the child’s individualized education program and must include information on the parent’s or guardian’s ability to request compensatory services.” (Public Act 101-0515)²⁹

Some LEAs in the District have already initiated a notification process. However, the notification is not an established practice for all LEAs. We recommend that this notification become a required policy adopted by all LEAs in the District’s public school systems. Notifying caregivers whenever students do not receive required services will reduce communication challenges, help connect students with makeup service hours, and hopefully reduce the need for due process complaints. However, without addressing special education teacher and related service provider shortages, many students will continue to go without related services. Therefore, we also recommend developing a plan for recruitment, training, and retention of highly qualified special education teachers and related service providers. Additionally, examining the cause of poor retention and staffing shortages within these fields is imperative to understanding how to resolve the recruiting and retention challenges within special education.

AFTERCARE PROGRAMMING FOR STUDENTS WITH DISABILITIES

Students with disabilities have historically experienced a lack of availability and accessibility in aftercare programs. As students have returned to in-person school and more families have returned to in-person work, high-quality, affordable aftercare is in high demand. Many programs have lengthy waitlists, and many D.C. schools have no on-campus aftercare option. At the time of this writing, fifty-five (55) out of one hundred eighteen (118) District of Columbia Public Schools offer either in-house or contracted out-of-school time programming. Limited aftercare availability has resulted in only some students within the same family attending the same school enrolling in aftercare programming. For example, we supported a family with siblings at the same school. One child was placed on the aftercare waitlist, while the other was offered a spot in the aftercare program.

Alongside the lack of availability and limited programming options, students with disabilities experience additional challenges regarding aftercare. In our casework, we have observed that aftercare and other out-of-school-time programs rarely accommodated students with disabilities. In some instances, students were removed mid-year by the aftercare program due to its inability to accommodate a student with disabilities needs. Removal from aftercare programming leaves families with few alternatives, as most programs reach capacity early in the school year, and waitlists are remarkably long.

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) govern the inclusion of children with disabilities in school-based or affiliated aftercare programming. Section 504 prevents programs and activities receiving federal funds from discriminating against individuals based on disability status, including any aftercare programming provided directly by schools or contracted aftercare providers receiving funding from schools or other government funds.³⁰ Additionally, Section 504 prevents institutions from “aid[ing] or perpetuat[ing] discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity.”³¹ This is prohibited even in situations where the agency or organization does not receive school or other government funding. ADA applies to both school-run and contracted before and aftercare programming. Title II of ADA prohibits public entities (including public and public charter schools) from discriminating against individuals with disabilities in their “services, programs, or activities.”³² Title III prohibits the same for private entities that provide “public accommodation,” like daycare centers.

Despite the legal requirement to accommodate students with disabilities, we worked with several families whose children with disabilities were not accommodated within out-of-school time programs. We worked with one caregiver who was told that the aftercare program could not accommodate her student’s needs and was instructed to find an alternative. The parent did not have options for her elementary-aged child, who needed toileting assistance and behavior accommodations due to her disability. Another parent we worked with received daily phone calls to pick up her student and repeated messaging that the student would be removed from aftercare due to behavior challenges caused by their disability.

Aftercare staff are often unequipped and undertrained regarding disabilities, particularly ones where behavior is a concern. Often, aftercare staff may not even know about a child’s disability or other unique needs until after an incident has occurred.



RECOMMENDATION

To address these concerns, we recommend the Office of the State Superintendent (OSSE) develop guidance outlining the rights of students with disabilities as it applies to aftercare settings. In addition, requirements for professional development for agencies and providers of aftercare programs as necessary to support the inclusion and accessibility of these programs to match the protections offered by the Americans with Disabilities Act (ADA) and Section 504. This guidance and training will ensure disability rights in programming provided by LEAs and third-party contractors. OSSE and school administrators should provide oversight and accountability to ensure that the agencies schools are contracting with are equitable and accessible.

Additionally, we recommend developing and administering a caregiver needs assessment for out-of-school time programs. The assessment can provide unique insight into the challenges caregivers of students with disabilities—the high cost of specialized summer camps, behavior as a condition for removal from aftercare programs—and identify needs that can prompt improved program design for the inclusion of students with disabilities. The findings should be used to expand programmatic offerings and increase training to meet those needs matching capacity and quality for out-of-school time programs to support extended working hours for families, transportation needs, affordability, and capacity for all students, including students with disabilities.

STUDENT SAFETY—INCIDENT REPORTS

Caregivers entrust schools to take care of their children similarly as they do. However, when it comes to student safety regarding injury, there are no standardized measures for aftercare or school staff to provide incident reports to caregivers. The response from schools varies widely. The lack of documentation and communication puts children and families at risk. Moreover, the lack of required documentation is especially significant for families of students with disabilities. Nonverbal students, for example, may be unable to communicate reliably about safety challenges they experience at school. These students need additional support in sharing incidents and information about their safety.

In SY21-22, we noticed caregivers not receiving pertinent or timely information regarding incidents involving their students in schools and aftercare related to student safety. No public-facing policies exist across traditional public or public charter schools that mandate notification or documentation to caregivers if a student is injured at school. Sometimes when documentation is requested, or parents ask to speak to someone who witnessed the event, they are disregarded or delayed in receiving what they asked for.

For example, a child with a disability had a bruise on their face when their caregiver picked them up from school. The school did not inform the caregiver about the injury or the cause of the injury. The school did not provide an incident report to give context about what happened, if it involved another child, a fall, or anything else. In extreme cases, parents may need proof of such notices to determine a pattern to plan for prevention, behavior supports, or assurance of what happened when receiving follow-up care.

Another case we worked on involved a student who sustained a bone fracture at school. The parent contacted our office for help regarding communication and accountability about why she was never notified about the injury by the school or provided an incident report. The caregiver later learned that the accident occurred during lunch while the student played a sport. The parent spoke with the school's office manager, who said they would investigate with the school nurse. Mom also followed up with the principal and did not receive a response. The student was still in school until the parent picked them up, learned about the injury, and took them to the hospital; as a result, physician care and proper treatment for this injury were delayed.

Another case involved a non-speaking student who had been coming home with scratches on their body, bruises, and other injuries. The parent had to take the child to the emergency room to get stitches for an open forehead wound. Mom felt that the school was not properly watching her child and was not providing an adequate explanation (nor documentation) of such injuries. The parent was also afraid that the hospital would question her about how he sustained the injury. Without having documentation from the school, the parent feared that the hospital would suspect that she was abusing her child.

RECOMMENDATION

Parents should be informed timely and accurately by the school about incidents involving injury so the child can receive care. Prevention measures can be implemented to intervene and protect students. Transparency is essential in building and maintaining parent trust. Parents often report



at-home injuries to schools for transparency purposes. Schools should do the same to support and collaborate across both environments.

Our policy recommendation is to draft district guidelines for conditions that necessitate contacting caregivers promptly when their children are injured at school and providing documentation for transparency and accountability. The reports should provide a point of contact and suggested follow-up actions. They should also serve as a record to establish a pattern of behavior or injury if needed and make appropriate adjustments to the student's programming or create safety plans.

Teachers, administrators, nurses, and other staff involved in the supervision of students must receive training on how to report incidents, what type of incidents require reporting, a timeline on how soon they should notify parents, and a standardized incident report form and follow-up procedures. This recommendation's implementation requires staff training, a new process/system development, and notification sent to enrolled students' families regarding the guidelines for incident reports. School administrators should oversee compliance with these guidelines.

APPENDIX I

WORK SUMMARY FOR THE SCHOOL YEAR 2021-2022

**2021
2022**

834

Contacts
received

626

Cases
handled

16

Cases pending
as of
August 15,
2022

402

Cases
examined
and resolved
informally

109

Cases
examined
and handled
through a
formal process

2

Cases
dismissed as
unfounded

106

Cases where
recommendations
were made

APPENDIX II

DEFINITION OF TOPICS

ACADEMIC PROGRESS

Matters involving student grades, credits, transcripts, and curriculum that impact learning and/or appropriate matriculation.

ATTENDANCE

Matters related to a student's regular and timely presence in school that impact learning, appropriate matriculation, and/or student welfare.

COMMUNICATION AND ENGAGEMENT

Matters preventing a student from accessing their education due to real or perceived breakdowns in the ability of parties to share information appropriately. Concerns about staff and staff behavior fall into this category.

DISCIPLINE

Matters regarding a student who has been temporarily or permanently placed out of school due to a behavior or disciplinary infraction, including but not limited to formal suspensions and expulsions.

ENROLLMENT

Matters preventing students from properly registering for school.

RESOURCE NEED

Matters related to a lack of goods, services, or information that impacts student learning or ability to attend school regularly.

SAFETY

Matters concerning the physical and emotional well-being of students on campus, during school events, and as they travel to and from school.

Here are all the subtopics within the safety category:

BULLYING -

Matters involving a student that feels harassed or targeted by another member of the school community. Additionally, the contact states that the harassment happened over time.

INCIDENTS INVOLVING TEACHERS AND OR STAFF MEMBERS -

Matters alleging improper behavior, including inappropriate language and physical assault by school staff or administrator directed towards a student.

INJURY OR HARM UNRELATED TO VIOLENCE -

Matters where student(s) were physically harmed or injured for reasons unrelated to school violence, e.g., insufficient adult supervision. However, these incidents are the most typical concerns of families of students with disabilities.

JUMPING -

Matters where students were engaged in a fight, including fights where one group of students targeted a much smaller group of students (also known as “jumping”).

MEDICAL / HEALTH AND WELLNESS -

Matters impacting learning or attendance for students with physical or mental welfare concerns, not caused by a disability.

SAFE PASSAGE -

Matters involving safety concerns that arise as students travel to and from school.

SCHOOL-WIDE FIGHTS -

Matters regarding excessive fighting at school not involving their student(s).

SEXUAL HARASSMENT -

Matters involving unwelcomed conduct of a sexual nature that a reasonable person determines to be so severe, pervasive, and offensive that it effectively denies a person equal access to the education program or activity.

SINGLE INCIDENT OF VIOLENCE -

Matters where there was no representation that the threat of physical violence or the threat of physical violence is ongoing.

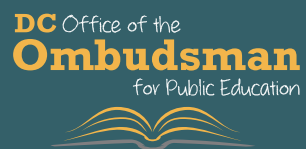
SPECIAL EDUCATION / DISABILITY

Matters preventing a student from accessing their education due to a student’s diagnosed or suspected disability.



ENDNOTES

- ¹District of Columbia Public Schools (DCPS), Public Charter School Board (PCSB), Deputy Mayor of Education (DME), Office of the State Superintendent of Education (OSSE), and the D.C. State Board of Education (SBOE).
- ²D.C. Code § 38–355. Limitations; protections. Retrieved here: <https://code.dccouncil.gov/us/dc/council/code/sections/38-355>
- ³Office of the Ombudsman for Public Education. 2020. *2020 Annual Report: Office of the Ombudsman for Public Education*. Retrieved from: <https://educationombudsman.dc.gov/sites/default/files/dc/sites/sboe/DCO%202020%20Annual%20Report%20%282%29%20%281%29.pdf>
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- ⁶Office of the Ombudsman for Public Education. 2020. *2020 Annual Report: Office of the Ombudsman for Public Education*. Retrieved from: <https://educationombudsman.dc.gov/sites/default/files/dc/sites/sboe/DCO%202020%20Annual%20Report%20%282%29%20%281%29.pdf>
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- ¹⁰DC Health Matters. *Households with Children*. Retrieved from: [DC Health Matters :: Demographics :: Households with Children](https://dchealthmatters.org/demographics/households-with-children)
- ¹¹D.C. Code § 38-236.02. *The Student Fair Access to School Amendment Act of 2018* (D.C. Law 22-057). Retrieved from: <https://code.dccouncil.gov/us/dc/council/laws/22-157>
- ¹²5-B DCMR § 2500.1
- ¹³D.C. Code § 38-236.05
- ¹⁴D.C. Code § 38-236.04
- ¹⁵5-B DCMR § 2505.6
- ¹⁶5-B DCMR § 2502.1
- ¹⁷5-B DCMR § 2504.10
- ¹⁸Office of the State Superintendent of Education (OSSE). *Guidance: Using Routine & Situational Distance Learning*. (2022, July 29). Retrieved from: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/SY%2022-23%20Distance%20Learning%20Guidance.pdf>
- ¹⁹Office of the State Superintendent of Education (OSSE). *Guidance: Using Routine & Situational Distance Learning*. (2022, July 29)
- ²⁰D.C. Code § 38-236.01(3)
- ²¹D.C. Code § 38-236.01(10)
- ²²D.C. Code § 38-236.01(7)
- ²³5-B DCMR § 2500.13
- ²⁴D.C. Code § 38-236.04
- ²⁵5-E DCMR § 2107
- ²⁶DCMR. (2022). *TITLE 5-A DCMR CHAPTER 30: SPECIAL EDUCATION*. Retrieved July 20, 2022, from https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/5-A%20DCMR%20Chapter%2030_Full%20Text.pdf
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- ³²*Americans with Disabilities Act*, 42 U.S.C. § 12101 (2010). Retrieved from: https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35149



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